

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6521

PETITION OF BRADFORD CHANEY

**OPINION OF THE BOARD
(Opinion Adopted June 7, 2017)
(Effective Date of Opinion: June 21, 2017)**

Case No. A-6521 is an application for a variance needed to allow construction of a proposed one-story rear addition. The proposed construction requires a variance of seven (7) feet, as it is within eighteen (18) feet of the rear lot line. The required setback is twenty-five (25) feet, in accordance with Section 59-4.4.B.2 of the Montgomery County Zoning Ordinance.

The Board held a hearing on the application on June 7, 2017. Petitioner Bradford Chaney appeared at the hearing with his wife, Heidi, and his contractor, Danny Peterson.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 11, Block B, 0022 Subdivision, located at 7725 Suthard Drive, Rockville, Maryland 20855, in the R-90 Zone. The subject property is 8,780.6 square feet in size. See Exhibit 4(a). The minimum lot size in the R-90 zone is 9,000 square feet.
2. The Petitioner has owned this property since 1986. See Exhibit 3. The primary structure on this property (i.e. house) was constructed in 1973. See Exhibit 4(b).
3. The existing house is situated at an angle to the front and rear lot lines. See Exhibit 4(a). The Petitioner noted in his Justification Statement that because the required rear setback is 25 feet, without a variance he can only extend his home five (5) feet to the rear. See Exhibits 3 and 4(a).

4. If the proposed construction is allowed to proceed, the resultant lot coverage will not exceed the 30 percent maximum for the zone. See Exhibit 3.
5. The subject property is bordered to the rear by undeveloped property owned by the Maryland-National Capital Park and Planning Commission.
6. At the hearing, Mr. Peterson testified that the Chaney's house is a rambler with a walk-out basement. He testified that the house backs up to parkland. He testified that the proposed one-level, 12-foot by 22-foot addition will create one-level living for the Chaney's so that they can age in place. He testified that the new space will be a four-season extension of this home.

Mr. Peterson testified that the topography of the subject property falls off towards a creek in the back. He testified that the Chaney's house is sited at an angle on the lot, and that if it were not at an angle, the proposed construction would not be a problem.

7. At the hearing, the Petitioner testified that the proposed addition will not be visible on either side of his house from the street, and that there is a park behind his home. He testified that his house is sited at an angle on the property. He asserted that the variance is justified by the arrangement of his house on the lot, and by the low-profile nature of the proposed addition.

The Petitioner testified to his belief that most of the houses in his neighborhood could be extended to the rear without difficulty and without the need for a variance, but that because of the angled siting of his house, part of the proposed addition crosses the rear setback line. He testified that the proposed addition will be constructed on posts so that it is level with the main floor of the home as you enter from the street.

8. At the hearing, Heidi Chaney testified that lots of their neighbors have decks and sunrooms on the backs of their homes. She testified that she and her husband have lived in their house for 30 years, and that they would like to be able to age in place. She testified that there would come a time when they would no longer be able to go up and down the stairs to access the lower level of their home, which is where their laundry is, if for no other reason than because of advancing arthritis.

Mrs. Chaney testified that it is her understanding that the area behind their house is part of Rock Creek Park. She testified that there is no public access to the parkland, that it will never be developed, and that Mill Creek runs through it.

CONCLUSIONS OF LAW

Based on the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E, as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59-7.3.2.E.2.a.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that the subject property, at 8,780.6 square feet, is substandard for the R-90 zone, which has a 9,000 square foot minimum. The Board further finds that the small size of this property results in it having a shallow backyard, which significantly limits the buildable area to the rear of this house. In addition, the Board finds that the angled siting of the house on this property further limits the buildable area to the rear of this home. The Board finds that this constitutes an extraordinary condition that is peculiar to this property. See Exhibit 4(a).

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioner purchased this property in 1986, after the house was built (1973), and is not responsible for the size of this property, the placement of the existing house on the property, or the resultant constrained buildable area to the rear of the home. See Exhibits 3 and 4(b).

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the constrained and shallow buildable area to the rear of this property, resulting from its small size and the angled placement of the home on this lot, creates a practical difficulty for the Petitioner in that the setbacks limit any meaningful expansion of this home to the rear, where the property is bordered by parkland. See Exhibit 7. The Board notes that expanding this house to the rear, as the Petitioner has proposed, would have little if any impact on the surrounding property owners because of the parkland behind the property, and that even with the proposed expansion, the Petitioner's lot coverage would be less than the 30 percent maximum for the R-90 Zone.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that the continued residential use of this home is consistent with goals of the applicable Master Plan.

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that granting this variance, to allow a rear addition to this home, will not be adverse to the use and enjoyment of abutting and confronting properties because the Petitioner's rear yard is bordered by undeveloped parkland. See Exhibit 7. The Board notes in furtherance of this conclusion that the addition will not be visible when

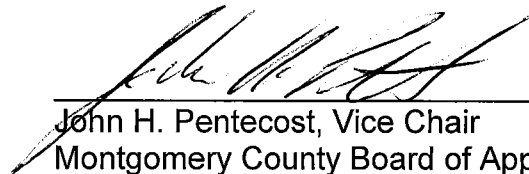
viewing this home from the street, and that the record contains letters of support from four neighbors. See Exhibits 10(a) – (d).

Accordingly, the requested variance to allow an addition within eighteen (18) feet of the rear lot line is **granted**, subject to the following conditions:

1. Petitioner shall be bound by his testimony and exhibits of record, and that of his contractor, to the extent that such testimony and evidence are mentioned in this opinion; and
2. Construction shall be according to Exhibits 4 and 5 (inclusive).

Therefore based upon the foregoing, on a motion by Edwin S. Rosado, seconded by Bruce Goldensohn, with John H. Pentecost, Vice Chair, in agreement, and with Stanley B. Boyd opposed, and with Carolyn J. Shawaker, Chair, necessarily absent:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost, Vice Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 21st day of June, 2017.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in

accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.